

\$~4

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL. L.P. 673/2016 & Crl. M.A. No. 20112/2016**

% *Date of Judgment: 12th April, 2017*

STATE OF NCT OF DELHI Petitioner

Through: Mr. Rajat Katyal, APP for State.

Versus

ROHTASH

..... Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

1. Leave to appeal is sought by the petitioner/State of NCT of Delhi under Section 378 (1) of the Criminal Procedure Code, 1973 against the order dated 23rd May, 2016 passed by the Court of Additional Sessions Judge (Fast Track Court), North West, Rohini Courts, New Delhi.
2. The accused/respondent faced trial for committing the murder of his wife Smt.Kavita who was found dead on 11th February, 2014 at their house No.D-31A, Shiv Vihar, Karala, Delhi. The respondent and the deceased were issueless and had adopted Baby Tamanna @ Tanya (PW-13) from her natural parents Sh.Dilip Kumar (PW-8) (a cousin of deceased) and Smt. Meena (PW-10) in January 2010.

3. On 11.02.2014 at about 08.10 AM, Baby Tamanna @ Tanya (PW-13) came to Sh.Pradeep (PW-9), an immediate neighbour of the respondent and informed him that her mother had died. Immediately Sh.Pradeep (PW-9) rushed to their house and found Kavita lying unconscious on a bed. He did not find the respondent there. Sh.Pradeep (PW-9) informed the police about the murder and ASI Raj Kumar (PW-18) reached the spot along with Ct. Anil Kumar (PW-17) and by that time Smt.Kavita had already been taken by a PCR to Sanjay Gandhi Memorial Hospital, Mangol Puri. They noticed blood on the bed, mattress as well as on one plastic chair. Bloodstained articles were seized and crime team was summoned. Spot was inspected and photographed.
4. ASI Raj Kumar (PW-18) rushed to Sanjay Gandhi Memorial Hospital, Mangol Puri. Smt.Kavita was unfit for statement. However, FIR was accordingly registered under Section 307 IPC. For better treatment, Smt.Kavita was shifted to Safdarjung Hospital where she succumbed to her injuries on 14.02.2014 at 09.45 AM.
5. After the said incident, Tamanna was brought back by her biological parents to their home. Her natural father Dilip (PW-8) informed the Police that after the incident Tamanna was looking perplexed and after she regained composure, she revealed that her father i.e. respondent had severely beaten her mother with a wooden-stick and also that he used to suspect her mother and there used to be quarrel between them.
6. The respondent was arrested on 13th February, 2014 when he admitted his complicity and led the Police party to a place where he had concealed the weapon of offence (wooden *thapi*) after committing the

murder of his wife. Such wooden *thapi* was accordingly seized by the Police. As per the Medical Officer, who conducted the autopsy on the body Smt.Kavita, the death in question was on account of head injuries which were ante-mortem in nature consequent to blunt force impact and such head injuries were sufficient to cause death in ordinary course of nature and those injuries could be caused by impact of wooden *thapi* also.

7. The respondent was accordingly charge sheeted for the commission of the offence under Section 302 of the Indian Penal Code. The learned Additional Sessions Judge framed the charge against the respondent under Section 302 IPC on 4th June, 2014. The respondent pleaded not guilty and claimed trial. The prosecution has examined 25 witnesses.
8. In the statement recorded under Section 313 Cr.P.C., the respondent has denied that Tamanna @ Tanya was ever given to them in adoption. He however stated that Tamanna merely used to visit them as they were issue-less.
9. He had taken the plea of *alibi* by stating that on the date of incident he was not at home and had gone to Kurukshetra on 8th February, 2014 where his elder brother Sh.Ram Pal Singh Rathi used to live and he was a close associate of one Raj Kumar Saini, Member of Parliament, Kurukshetra and he had gone there in connection with Parliament election. He also stated that he never suspected his wife and never threatened her and he himself went to the Police Station when he was arrested and made to sign on some blank papers. He also stated that Tamanna had given false statement at the behest of her natural parents.

10. The respondent has examined his real brother Sh.Ram Pal Singh Rathi in his defence in order to prove his plea of *alibi*.
11. After hearing the parties, the learned Additional Sessions Judge (Fast Tract Court) acquitted the respondent of the offence under Section 302 IPC by extending the benefit of doubt.
12. It is argued by the learned APP for the State that the order of the Trial Court is based on presumptions, conjectures and surmises and the Court has acquitted the respondent by drawing wrong conclusions which were not based on the factual matrix of the case. It is further argued that the Trial Court has failed to appreciate the statement of Sh.Pradeep (PW-9) who has stated that he was informed by Tamanna that “*Mummy Mar Gayi*” which shows that Tamanna was present at the spot at the time of commission of offence and was not a planted witness and till the time the Investigating Officer recorded the statement of Sh.Pradeep (PW-9), the natural parents of Tamanna namely Dilip (PW-8) and Meena (PW-10) were not present. He also submitted that learned Trial Court has failed to appreciate the testimony of Tamanna @ Tanya (PW-13) who has supported the case of the prosecution throughout though there were some contradictions in the statement of Baby Tamanna @ Tanya in her cross-examination but those were minor and not fatal to the case of the prosecution and on the material aspect that she had seen the respondent (her father) hitting her mother (deceased) and as such there was no material contradiction.
13. Learned APP for the State also argued that as per the post-mortem, the head injuries were caused by impact of blunt force which were

sufficient to cause death in ordinary course of nature and the Doctor also opined that injuries could be caused by aforesaid *thapi*. He also argued that though the respondent had taken the plea of *alibi* that he was not present in Delhi on the date of incident or that he was in Kuruskshetra but failed to discharge the burden. He also submitted that perusal of the prosecution evidence and documentary evidence nails the respondent and the respondent should have been convicted under Section 302 Cr.P.C.

14. We have heard the learned APP for the State and perused the record.
15. Initially the deceased Smt. Kavita was taken to the casualty ward of Sanjay Gandhi Memorial Hospital, Mangol Puri, by the PCR officials on 11th February, 2014 at 9:30 AM with the history of assault and she was medically examined by CMO vide MLC Ex.PW-21/A. She was unconscious. Immediately she was shifted to Safdarjung Hospital on the same day where she succumbed to her injuries on 14th February, 2014 and declared dead at 9:45 AM. During her stay in both the hospitals, she was unfit for statement.
16. PW-1 Dr.Md. Shadab Raheel, Senior Resident, Forensic Medicine, Safdarjung Hospital, Delhi, had conducted the post-mortem on the body of deceased Smt.Kavita on 15.02.2014 and observed following injuries:
 - “1) stitched lacerated wound of size 4 cm x 0.5 cm, muscle deep four stitches were present in situ over right side of the head, 8 cm from tragus of right ear and 10 cm from midline.
 - 2) stitched lacerated wound of size 3 cm x 0.5 cm. Muscle deep present on right side of head, 11 cm from tragus of right ear and 5 cm from midline.”

17. The Medical Officer conducting post-mortem examination opined the cause of death as ante-mortem head injury upon blunt force impact. Time since death was opined as one day. He also opined that injuries were sufficient to cause death in the ordinary course of nature vide post-mortem report Ex.PW-1/A.
18. At the time of arguments before the Trial Court the respondent did not dispute that it was a homicidal death.
19. The prosecution claimed PW-13 Baby Tamanna @ Tanya as the sole eye-witness who was the adopted daughter of the respondent and deceased Smt.Kavita. She was adopted by them from her natural parents PW-8 Sh.Dilip Kumar and PW-10 Smt.Meena. No documentary evidence of adoption was adduced by the prosecution. However, the learned Additional Sessions Judge found that in the cross-examination of PW-8 Dilip Kumar, it was suggested by the defence/respondent that he had given his daughter in adoption to the accused Rohtash to grab his property. PW-12 Sh.Rajender Singh, who is the real brother of deceased Smt.Kavita, has testified in his examination in chief that his sister (Smt.Kavita) was not having any issue and she had adopted Tamanna (PW-13) and after such adoption Tamanna used to treat Kavita as her mother and this fact has not at all been rebutted and went uncontroverted in his cross-examination by the defence. Similarly PW-10 Smt.Meena has also deposed that since Rohtash and Smt.Kavita (deceased) were not having any child and she had given her daughter Tamanna (PW-13) in adoption to them when she was of 11 days only.

20. Prosecution has examined PW-9 Sh.Pradeep, a neighbour of the respondent. He claimed that on 11th February, 2014 at about 8:10 AM, while he was standing outside his house No.D-31, Shiv Vihar, Karala, neighbours told him that some incident had taken place and one girl aged about four years Tamanna (PW-13) was also standing among the neighbours who told him that “Mummy mar gayi” (her mother was dead). PW-9 Pradeep along with other persons went to the house of accused Rohtash and found blood scattered on a bed where Smt.Kavita (deceased) was lying in an unconscious condition and there was blood on her head. He also found quilt over her body up to her shoulders. He then dialled 100 and informed the police. Police reached the spot and took the injured Smt.Kavita to the hospital in a PCR van. Meanwhile local police also arrived there and made inquiries from him and recorded his statement Ex.PW-9/A. He had also gone to Police Station Kanjhawala at about 2:00 pm. His house is situated in the backside of the house of the respondent and their rear wall is common. Admittedly he is not an eye-witness.
21. The vital question involved in the case is whether Baby Tamanna @ Tanya (PW-13) had witnessed the incident or not. At the time of recording of her statement during the trial on 11th August, 2015 she was only 4-5 years of age and since the incident was of night intervening 10th and 11th February, 2014, she would be hardly 3 years of age at that time.
22. Before recording her statement, the learned ASJ put preface questions to PW-13 Tamanna and after assessing her tender age and the fact that

she might not be able to understand and appreciate the meaning and value of oath under Oath Act, 1969, oath was not administered to her.

23. While appreciating the evidence of the child witness, the Apex Court held in ***Ratansinh Dalsukhbhai Nayak v. State of Gujarat***, AIR 2004 SC 23, and relevant para reads as under: -

“The decision on the question whether the child witness has sufficient intelligence primarily rests with the trial Judge who notices his manners, his apparent possession or lack of intelligence, and the said Judge may resort to any examination which will tend to disclose his capacity and intelligence as well as his understanding of the obligation of an oath. The decision of the trial court may, however, be disturbed by the higher court if from what is preserved in the records, it is clear that his conclusion was erroneous. The precaution is necessary because child witnesses are amenable to tutoring and often live in a world of make-believe.”

24. In ***Dattu Ramrao Sakhare v. State of Maharashtra***, (1997) 5 SCC 341, the Supreme Court made the following observation:

*“A child witness if found competent to depose to the facts and reliable on such evidence could be the basis of conviction. In other words even in the absence of oath the evidence of a child witness can be considered under Section 118 of the Evidence Act provided that such witness is able to understand the questions and able to give rational answers thereof. The evidence of a child witness and credibility thereof would depend upon the circumstances of each case. **The only precaution which the court should bear in mind while assessing the evidence of a child witness is that the witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored.** There is no rule or practice that in every case the evidence of such a witness be corroborated before a conviction can be allowed to stand but, however as a rule of prudence the*

court always finds it desirable to have the corroboration to such evidence from other dependable evidence on record.”

(Emphasis supplied)

25. Child witnesses are dangerous witnesses as they are pliable and liable to be influenced easily, shaken and moulded and the Court should bear in mind that such witness must be a reliable one and his/her demeanour must be like any other competent witness and there is no likelihood of being tutored. There is no practice that in every case the evidence of such a witness should be corroborated before a conviction can be followed and if there is no inkling or possibility of tutoring, such version can be rejected and inference regarding tutoring needs to be drawn from the contents of deposition.
26. The learned Trial Court has also noted the demeanour of PW-13 Tamanna in para 9.14 of the judgment, which reads as under: -

“9.14. In the present case, I have not even the slightest of hesitation that the child witness i.e. Baby Tamanna @ Tanya seems a competent witness though keeping in mind her tender age, oath was not administered to her. She made statement before the Court without much difficulty. Aura and fear of being in court-room can derail mental equilibrium of many grown-ups but Baby Tamanna, I must say, displayed exceptional ease throughout the time of recording of her statement. She had no fear in her mind of any sort in the court-room and despite being a toddler, her mind remained un-agitated all along. She kept on answering the questions though on several occasions, she altered her answers, I must supplement right her that her such abrupt shift in responses has made the task of this court much more onerous and intricate.”

27. In her cross-examination this child witness PW-13 Baby Tamanna @ Tanya at number of places admitted that she had made the statement as told to her by her natural mother Smt. Meena (PW-10). She also admitted that one police official had also tutored her outside the court. Sometimes, she kept on correcting herself virtually on such material questions. While answering the court's question as to whether she had herself seen Rohtash (respondent) hitting Kavita (deceased) or whether she stated so because Meena (her natural mother) had told her to say so, she answered that Meena (Mummy) had told her to say so but in the next breath she claimed that she herself had seen the incident. When the defence put a specific question to her that respondent had not killed Smt. Kavita, she answered in the affirmative and admitted that it was correct and she then changed her answer by claiming that respondent had killed the deceased and he had beaten her up also. She also admitted in her cross-examination that she has been tutored and spent much more time with her natural parents instead of her adoptive parents.
28. In her statement before the trial court when PW-13 Baby Tamanna was asked as to what happened to her mother, she answered that there was a quarrel and when asked with whom she claimed it was with "Rohtash". The trial court rightly observed that normally a child of such tender age would not take the name of her father and the expected general answer would be 'Papa' or the witness would raise the finger towards her father and in a very casual manner she stated that her mother was killed by "Rohtash" which creates a doubt in the mind of the court and is indicative of some directive. She also

claimed that even when the incident had happened she used to stay with Meena mummy (natural mother), which further creates a little doubt as to whether she was actually present at the spot at the time of incident and had seen the incident. Moreover, PW-9 Pradeep claimed that he was informed by PW-13 Baby Tamanna @ Tanya “Mummy mar gayi” (mother was dead) instead of telling that “Mummy ko papa ne maar diya”. This further creates doubt in the prosecution case.

29. If PW-13 Tamanna @ Tanya was an eye-witness, the Investigating Officer should have immediately recorded her statement. IO PW-19 Inspector Neeraj Kumar was given the investigation of the case on 14th February, 2014. When he was specifically asked as to why he recorded the statement of Tamanna belatedly on 04.05.2014, he answered that he tried to contact her but she was not in Delhi and was found residing with her parents (natural parents) in Haryana and when he was able to contact her father (natural), she was brought to Delhi and then he recorded her statement. He claimed to have deputed SI Kamal and ASI Raj Kumar to visit such place in Haryana but no such fact has been deposed by PW-18 ASI Raj Kumar. The learned trial court had also perused the case diary and found that there was nothing which may even remotely indicate that police had made any effort, even namesake, to contact Tamanna @ Tanya during the interregnum.
30. PW-8 Dilip Kumar (natural father of Baby Tamanna) testified that he was informed by Tamanna that the respondent used to suspect Kavita, which is very unusual and implausible that a child of three years of age would be able to make any comment regarding chastity and character.

31. PW-8 Dilip and PW-10 have claimed in their statements that they were in Delhi and they have never claimed that they had gone out of Delhi. Surprisingly, PW-8 had claimed that he had gone to hospital after 10 days after the incident to meet Kavita whereas she had already died on 14.02.2014 i.e. three days after the incident in question. There is a long delay of about 80 days in recording the statement of Tamanna U/s. 161 Cr.PC, which was recorded on 04.05.2014 whereas the incident is of 11.02.2014. It has been held by a Division Bench of this court in ***Chander Prakash @ Chander v. State***, 1995 Cr.L.J. 3028 (Para 22) that if the statement of child witness is not recorded promptly by the Investigating Officer, the possibility of his/her being tutored to make statement cannot be completely ruled out. In the present case after the incident in question Baby Tamanna (PW-13) had been residing with her biological parents and there was a possibility of her being tutored which is reflected in the cross-examination of PW-13 as discussed hereinbefore.
32. In view of the above discussion, testimony of PW-13 Baby Tamanna @ Tanya does not inspire full confidence and there are traces of tutoring which compelled the trial court to give benefit of doubt to the respondent and we also do not find any reason to take a different view than the trial court had taken.
33. The respondent had taken the plea of *alibi* by pleading that he had gone to Kurukshetra and was not in Delhi at all and he examined his real brother DW-1 Rampal Singh Rathi who stated that the respondent had come to him in Kurukshetra on 08.06.2014 and returned on 12.06.2014. PW-9 Pradeep had deposed in his cross-examination that

he had seen the respondent 15-20 days before the incident and thereafter he saw him in the court only. Admittedly, PW-13 Sh. Pradeep is the immediate neighbour of the respondent. IO has not examined any other neighbour or relative or close acquaintance of the respondent or deceased Kavita who might have seen the respondent from 09.02.2014 to 12.02.2014 much less in that locality. Even the natural parents of PW-13 have not thrown any light over the presence of the respondent during those days at his residence. The prosecution has not examined any such witness. No doubt that initially onus is always on the prosecution to show that the respondent was present at the time of incident and prosecution cannot shirk its responsibility and has to bring positive evidence on the record. It has been held by the Apex Court in the case of *Narendra Singh & Anr. v. State of MP*, (2004) 10 SCC 699, that even in case where the plea of *alibi* is raised by the accused, the burden of proof remains on the prosecution. It is settled principle of law that the onus on the defence is not rigorous and prosecution is required to prove its case beyond any reasonable doubt where the defence is merely required to show the preponderance of probability.

34. The investigating officer has also not collected the Call Details Record (CDR) of the respondent particularly when a mobile phone was recovered from the personal search of the respondent without any SIM. On examining the mobile phone, the trial court found that it had slots for two SIM cards but there was no SIM card therein and the investigating agency could have easily flashed IMEI number of such

instrument to the concerned service providers in order to prove its case.

35. On the question of recovery of the weapon of offence, it is the case of the prosecution that respondent had made a disclosure statement on 13.02.2014 wherein he claimed that he had thrown *Thapi* in a street outside his home and could get the same recovered. The disclosure statement was recorded on 13.02.2014 whereas the alleged recovery took place on 15.02.2014 vide Seizure Memo Ex.PW-19/D but such recovery does not inspire confidence on account of unexplained delay of two days between the disclosure and the recovery. As per the disclosure statement, the *Thapi* had been thrown in a street whereas as per the seizure memo it was recovered at a distance of 200 yards from one open plot where it was allegedly concealed under the heap of cut branches. The learned trial court perused the Case Diary showing that on the date of arrest of the respondent himself he led the police to such open plot but no *Thapi* could be recovered from such open plot on that day. The investigating agency could not throw light and explained as to how such *Thapi* was eventually recovered from such vacant plot two days thereafter. Moreover, the investigation agency had also not associated any independent witness before making any recovery. The recovered *Thapi* was sealed by Inspector Neeraj Kumar (PW-19) which was deposited in the *Malkhana*. The Investigating Officer had not mentioned that such *Thapi* was bearing any blood stains in the Seizure Memo Ex.PW-19/D. It remained in *Malkhana* for more than two months and thereafter it was sent to Safdarjung Hospital to seek an opinion as to whether such injuries were possible by such weapon

vide Ex.PW-19/E dated 22.02.2014. This delay is also not explained. This was sent to FSL on 06.05.2014 and as per FSL report dated 05.02.2015, human blood was found on *Thapi* without finding the blood group. It is well settled proposition of law that such recovery of the alleged weapon of offence having blood stains at the instance of the accused is a very weak evidence. In the decision of ***Prabhoo Vs. State of U.P.*** reported as **AIR 1963 SC 1113**, recovery of a blood-stained shirt and a dhoti as also an axe on which human blood was detected was held to be extremely weak evidence. Similarly, in the decision reported as **(1977) 4 SCC 600 (1) *Narsinbhai Prajapati v. Chhatrasinh Kanji***, the recovery of a blood-stained and a dhoti as also the weapon of offence a dhariya were held to be weak evidence. In the decision reported as **AIR 1994 SC 110 *Surjit Singh v. State of Punjab*** the recovery of a watch stated to be that of deceased and a dagger stained with blood of the same group as that of the deceased were held to be weak evidence. As late as in the decision reported as **(2009) 17 SCC 273 *Mani v. State of T.N.*** recoveries of blood stained clothes and weapon of offence stained with blood were held to be weak recoveries. Similar view was taken by this court in ***Mohd. Shahid v. State*** in **Crl.A. 433/1999 dated 01.04.2014**; ***Jaffar @ Raju v. State*** in **Crl.A. 1057/2010**; ***Parmeshwari v. State***, **2010 (4) Crimes 599 Delhi**; ***Amar Pal v. State*** **2010 (170) DLT 788**; ***Shekhar v. State of NCT of Delhi (Delhi)*** **2008 Cri.L.J. 3258**; and ***Oliver Kujur v. State of Delhi***, **Crl. A. No. 495/2000 (dated 13.05.2014)**.

36. The prosecution has also not adduced any evidence about the motive of the crime. PW-18 ASI Raj Kumar (1st IO) deposed that on making

inquiries from the neighbours, he found that there used to be quarrel between the two i.e. the respondent and Smt. Kavita (deceased). He also claimed that Pradeep (PW-9) had revealed to him such fact, however Pradeep (PW-9) did not depose in his statement about alleged fight between the respondent and the deceased. Therefore, the version of PW-18 ASI Raj Kumar is nothing but hearsay in nature particularly when no person from the neighbourhood has been examined on the point that there used to be fight between the respondent and the deceased Smt. Kavita.

37. The scope of interference by the Appellate Court in appeal against order of acquittal has been dealt with by the Hon'ble Supreme Court in *Tota Singh and Anr. v. State of Punjab*, AIR 1987 SC 108: (1987) 2 SCC 529. The Supreme Court made the following observation:

*“6. ...The jurisdiction of the Appellate Court in dealing with an appeal against an order of acquittal is circumscribed by the limitation that **no interference is to be made with the order of acquittal unless the approach made by the lower Court to the consideration of the evidence in the case is vitiated by some manifest illegality or the conclusion recorded by the Court below is such which could not have been possibly arrived at by any Court acting reasonably and judiciously** and is, therefore, liable to be characterised as perverse. Where two views are possible on an appraisal of the evidence adduced in the case and the Court below has taken a view which is a plausible one, the Appellate Court cannot legally interfere with an order of acquittal even it is of the opinion that the view taken by the Court below on its consideration of the evidence is erroneous.”*

(Emphasis Supplied)

38. In *State of Rajasthan v. Raja Ram*, (2003) 8 SCC 180: AIR 2003 SC 3601 the Apex Court held as under:

*“7. There is no embargo on the appellate court reviewing the evidence upon which an order of acquittal is based. Generally, the order of acquittal shall not be interfered with because the presumption of innocence of the accused is further strengthened by acquittal. The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. In a case where admissible evidence is ignored, a duty is cast upon the appellate court to reappraise the evidence in a case where the accused has been acquitted, for the purpose of ascertaining as to whether any of the accused committed any offence or not. (See *Bhagwan Singh v. State of M.P.* JT (2002) 3 SC 387) **The principle to be followed by the appellate court considering the appeal against the judgment of acquittal is to interfere only when there are compelling and substantial reasons for doing so. If the impugned judgment is clearly unreasonable, it is a compelling reason for interference.** These aspects were highlighted by this Court in *Shivaji Sahabrao Bobade v. State of Maharashtra* 1973 SCC (Cri) 1033, *Ramesh Babulal Doshi v. State of Gujarat* (1996) 9 SCC 225 and *Jaswant Singh v. State of Haryana* JT (2000) 4 SC 114.”*

39. The Apex Court in *Chandrappa v. State of Karnataka*, (2007) 4 SCC 415, laid down the general principles regarding the power of the appellate court while dealing with an order of acquittal as under:

“42. From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reappreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on questions of fact and of law.

(3) Various expressions, such as, “substantial and compelling reasons”, “good and sufficient grounds”, “very strong circumstances”, “distorted conclusions”, “glaring mistakes”, etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of “flourishes of language” to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court.”

40. We, therefore, find that the learned trial court has rightly extended the benefit of doubt to the respondent by acquitting him of the offence

under Section 302 IPC and we do not find any illegality or infirmity in the judgment of the Trial Court warranting interference.

41. Thus, the leave to appeal is dismissed being without any merit.

42. The trial court record be sent back.

Crl.M.A. No.20112/2016

43. In view of the above order, the application is disposed of.

VINOD GOEL, J.

G. S. SISTANI, J.

APRIL 12, 2017/jitender

